

RESPONSE

Trustee objects to the debtors seeking to forgive approximately \$6,000.00 in plan payment arrears through paragraph 10 of the amended plan. Debtors have been making payments through TFS. While debtor's declaration does state that debtors have been struggling to make their plan payments, the declaration does not identify any specific hardship. Furthermore, debtors' income has actually increased since filing. Debtors claimed \$12,679.98 in gross income at the time of filing. ECF #1, pg. 42. Based on the supplemental schedules filed on September 30, 2019, debtors are now making \$13,510.79 per month gross. Debtors also reduced the pension income on the supplemental schedule I by about \$200.00 without explanation, which would further increase their post-confirmation gross income. As a result, debtors appear to have chosen not to make their required payments through TFS despite having more income.

Debtors have also increased their expenses by \$2,328.00 per month. A chart detailing the changes in income and expenses is attached hereto as exhibit A. Although \$1,200.00 of these expenses are attributable to debtors backing out VA disability, the debtors have increased their discretionary expenses by \$1,375.00, while at the same time decreasing the percentage distribution to unsecured creditors.

Trustee further objects to the debtors removing VA disability from their income on the supplemental schedule I, which appears to be the primary reason the modified plan was filed. ECF # 19. This modification is not being done in good faith. Debtors are above median income debtors with a monthly disposable income at the time of filing of \$2,020.77 per month. Debtors have not identified any financial change in their circumstances that would necessitate a plan modification, and in fact have increased income. Instead, debtors appear to be relying on the idea that the HAVEN act has a retroactive effect for confirmed plans. This issue is not addressed, however, in debtors' moving papers, and debtors have set the response date on this motion several days short of the response date required under the local

RESPONSE

1 rules. Therefore, Trustee requests that the court set a briefing schedule so these issues may be fully
2 addressed and properly briefed.

3 **WHEREFORE**, Trustee requests that the Court set a briefing schedule for the above issues.

4 **DATED** this 24th day of October, 2019.

5
6 /s/ Matthew J.P. Johnson

7 Matthew J.P. Johnson, WSBA# 40476 for
8 Michael G. Malaier, Chapter 13 Trustee

9
10 **CERTIFICATE OF MAILING**

11 I certify under penalty of perjury under the laws of the United States that on October 24, 2019, I
12 caused to be mailed via first class mail a true and correct copy of the Trustee's Response to Debtors'
13 Motion to Amend Chapter 13 Plan to the following:

14 Anthony Albert Pandina III
15 Helen Shannon Pandina
16 20413 NE 161st Street
17 Brush Prairie WA 98606

18 The following parties received Trustee's Response to Debtors' Motion to Amend Chapter 13 Plan
19 via ECF:

20 Ellen Ann Brown
21 United States Trustee

22 Executed at Tacoma, Washington this 24th day of October, 2019.

23
24 /s/ Ruth Wilson

25 Motion Coordinator for
Michael G. Malaier, Chapter 13 Trustee